

## **Appendix B Common Issues**

The common issues are:

### **A. Breach of Contract**

1. What are the relevant terms (express, implied or otherwise) of the Subclass' members' employment contracts with the Defendant Mac's respecting:
  - a. wage rate;
  - b. hours of work;
  - c. length of the contract;
  - d. recruitment fees; and
  - e. payment of two-way air transportation.
2. Did Mac's breach any of the foregoing contractual terms? If so, how?
3. Where Subclass members' employment was terminated prior to the completion of the 24-month fixed term set out in the contract, were they required to mitigate their losses?
4. Did Mac's breach its duty to honestly perform the terms of the employment contract by misleading Subclass members about the availability of employment?
5. Are Subclass members able to recover damages in excess of the minimum notice period in the employment contract?
6. Is Mac's entitled to set off salary earned by the Subclass members during the notice period or otherwise, even if the Subclass members had no duty to mitigate?

### **B. Fees**

1. Were the fees paid by the Class members to Overseas and/or Trident Immigration fees for employment, prohibited by employment standards legislation, or are they fees for immigration and settlement assistance?

### **C. Unjust Enrichment**

1. Was there any juristic reason for Overseas and/or Trident Immigration to charge the Recruitment Fees?

2. Were Overseas and/or Trident Immigration unjustly enriched by having the Class members pay the Recruitment Fees?

#### D. Breach of Fiduciary Duty

1. Did Overseas have a fiduciary duty to the Class members as Regulated Canadian Immigration Consultants?
2. Did Overseas breach this fiduciary duty?
3. If the answer to D 2. is yes, was Overseas acting as agent of Mac's when it breached its fiduciary duty and, if so, is Mac's liable for the actions of its agent?

#### E. Remedy & Damages

1. If the answer to any of the common issues is "yes", what remedies are Class members entitled to?
2. If the answer to any of the common issues is "yes", are the defendants liable on a class-wide basis?
3. What is the appropriate method of procedure for distributing the damages award to the Class?
4. Is the Class entitled to an award of aggravated or punitive damages based upon the Defendants' conduct and, if so, in what amount?
5. If the answer to E 4. is "yes, what is the appropriate method of procedure for distributing any aggravated or punitive damages to the Class?